agreement between the appellant and the respondents as regards the payment of $15,000. Accordingly, this appeal must be dismissed with costs.

Appeal dismissed.

Solicitors: *Lee Brothers*; *James CS Loh.*

Reported by *Terence Tan Bian Chye*

Tan Ah Yeo & Anor v Seow Teck Ming & Anor

HIGH COURT (SINGAPORE) – SUIT NO 1399 OF 1981
CHAO HICK TIN JC
14 FEBRUARY 1989

Civil Procedure – Judgment pronounced but not yet perfected – Whether court may recall judgment and hear further arguments – Alteration of judgment

Civil Procedure – Limitation – Whether s 8 of the UK Maritime Conventions Act 1911 is applicable to an ordinary common law negligence action – Action commenced after expiration of limitation period – Discretion of court to extend period – Pending negotiations at material time – Ignorance of limitation period or oversight regarding limitation on the part of parties or their solicitors – Defendants raising issue of limitation at a late stage – Whether substantial grounds or special reasons shown to justify extension – Limitation Act (Cap 163, 1985 Ed), s 3 – UK Maritime Conventions Act 1911, s 8

Statutory Interpretation – Imperial statute enacted at a time when Singapore was a British colony – Whether still part of the law of Singapore – Whether repealed in whole or in part by a local statute – Statute enacted to give effect to international conventions – Whether Parliament may widen the scope of an international convention in its application when enacting an Act of Parliament – Collision Convention 1910, arts 1 & 12 – Contributory Negligence and Personal Injuries Act (Cap 54, 1985 Ed), s 4(1) – UK Maritime Conventions Act 1911, ss 1, 9 & 10

The plaintiffs brought a negligence action in their capacity as the personal representatives of one Tay Kian Ho, deceased, claiming damages on behalf of the estate and the widow and children of the deceased under s 12 of the Civil Law Act arising out of a collision along the Singapore river between a tongkang and a motor lighter on 24 May 1978. The writ was issued on 30 April 1981. The statement of claim was filed on 12 February 1982. The writ and the statement of claim were served on the first and second defendants on 10 March 1982 and 9 March 1982 respectively. The appearance and the defence of the defendants were filed on 11 March 1982. The case was eventually fixed for hearing on 4 August 1988.

On 26 July 1988, the defendants applied for an order permitting them to amend the defence to add an additional ground, namely, that the action was time-barred by reason of s 8 of the Maritime Conventions Act 1911. The application was granted by the assistant registrar on 1 August 1988. In view of the amendment, the plaintiffs applied for certain preliminary questions to be decided. The questions were:

(i) is the imperial Maritime Conventions Act 1911 ('the MC Act') or only s 1 thereof part of the laws of Singapore?

(ii) does the MC Act apply to a case where both vessels are Singapore-registered internal water craft and the collision takes place in the internal waters of Singapore and the parties are Singaporeans?

(iii) is the limitation period prescribed in s 8 of the MC Act applicable to an ordinary common law action for negligence for the benefit of the estate of the deceased, which also includes a dependency claim? and

(iv) in the event that the answer to question (iii) is in the affirmative, will the court, in the circumstances of this case, exercise its discretion under the proviso to s 8 of the MC Act to extend the period of limitation prescribed therein?

Counsel for the plaintiffs sought to rely on s 4(1) of the Contributory Negligence and Personal Injuries Act (Cap 54, 1985 Ed) to say that only s 1 of the MC Act applied in Singapore. Another argument was that in Vol 8 of *The 1955 Revised Edition of the Laws of Singapore*, the MC Act was not listed as one of the imperial statutes which applied in Singapore. It was also contended for the plaintiffs that as the MC Act was enacted to give effect to the Collision Convention 1910, it should be interpreted in line with the Convention and that as the Convention applied in the case of a collision between sea-going vessels or between a sea-going vessel and a vessel of inland navigation, the Convention could not apply in the instant case.

The correspondence between the parties showed that there had been negotiations between them regarding the claim prior to the expiration of a two-year period beginning from the accrual of the cause of action. From the beginning the insurers of the defendants had denied liability but had offered certain ex gratia payments.

Following delivery of judgment in this case, the question arose whether the court could recall the judgment and hear further arguments.

Held:

(1) It was clear beyond any doubt that the MC Act applied to Singapore in 1911. The attention of the court had not been drawn to any subsequent Act of the United Kingdom (until 1963) or of Singapore which repealed the MC Act in so far as its application to Singapore was concerned. Accordingly, the MC Act was still part of the law of the land.

(2) A plain reading of s (1) of the Contributory Negligence and Personal Injuries Act showed that it recognized that the MC Act applied in Singapore. All that the section said was that the Contributory Negligence and Personal Injuries Act did not apply to a claim that fell within s 1 of the MC Act. It did in no way repeal any of the other provisions of the MC Act.

(3) Although in Vol 8 of the *1955 Revised Edition of the Laws of Singapore* the MC Act was not listed as one of the imperial statutes which applied in Singapore, it was clear that Vol 8 was not intended to be exhaustive. Instead, s 13 of the Revised Edition of the Laws Ordinance 1951 expressly provides that The Revised Edition of Ordinances may also contain a reprint of such imperial statutes as the Commissioners consider useful to include.

(4) The MC Act applied to the instant case notwithstanding the fact that the collision occurred in the Singapore river and both the vessels were inland water craft and the parties were Singaporeans. Just because the MC Act was enacted to give effect to two international conventions does not mean that Parliament may not widen the scope of the Act to cover its own nationals or its own inland water craft. While it is a principle of legal policy that an Act should be interpreted to conform with

international law there was nothing here in conflict between the MC Act and the Collision Convention 1910. However, if indeed in a particular case there is a real conflict between international law and national law, national law must prevail.

(5) Section 8 of the MC Act applies to a common law action in negligence arising out of a collision at sea, coupled with a dependency claim.

(6) In considering an application for extension of the limitation period in s 8 of the MC Act, the judge has a wide discretion. Nevertheless it is a discretion which shall only be used in favour of a plaintiff if there are special circumstances which create a real reason why the statutory limitation shall not take effect. For an extension of the limitation period to be allowed, there must be substantial grounds or special reasons for doing so. The grounds or reasons must relate to the circumstances why a writ was issued late. There must be some good reasons to explain the delay justifying the court in exercising its discretion under s 8 of the MC Act to extend time.

(7) There was nothing in the correspondence which could in any way be construed to suggest that prior to 24 May 1980 (when the limitation period expired) the insurers had requested the plaintiffs to withhold action. Neither was there anything to suggest that the insurers had induced quiescence. The fact that there were pending negotiations between the parties could not per se amount to a good or substantial ground to grant an extension under s 8 of the MC Act. There must be either an express or implied inducement by the defendants or their insurers to the plaintiffs to withhold any further action. Considering the course of conduct between the parties, there was not anything of that kind here. Nothing in the delay in the institution of the writ could be attributed to the defendants or their insurers. There appeared to be dilatoriness on the part of the plaintiffs and/or their solicitors and apart from exhibiting the correspondence regarding the negotiations, the plaintiffs had given no explanation as to why the writ was not issued within the two-year period. The plaintiffs and the insurers, as well as their solicitors, had overlooked the two-year limitation period. But ignorance or oversight on the part of the parties or their solicitors could not render the law any less applicable to the case. That fact could not be sufficient ground to grant extension. The late raising of the limitation defence had nothing to do with the question why the writ was issued late.

(8) The court has power to recall its judgment and to alter it at any time before it is entered and perfected.

[*Editorial Note*: The plaintiffs have appealed to the Court of Appeal vide Civil Appeal No 18 of 1989.]

Cases referred to

1 *The 'Atlantic Faith'* [1978] 2 MLJ 187 (refd)
2 *Cheney* v *Conn* [1968] 1 All ER 779 (refd)
3 *Collco Dealings Ltd* v *Inland Revenue Commissioner* [1961] 1 All ER 762 (refd)
4 *Edwards* v *Quickenden & Forester* [1939] P 261 (refd)
5 *Ch'ng Kim Huat* v *Hamburg-Amerika-Nishche Packetfahrt* [1936] MLJ 214 (refd)
6 *The 'Vadne'* [1959] 2 Lloyd's Rep 480 (follld)
7 *The 'Caliph'* [1912] P 213 (follld)
8 *The 'Alnwick'* [1965] 2 All ER 569 (follld)
9 *Re Goring* [1987] 1 QB 687 (refd)
10 *The 'Arraiz'* (1924) 19 Ll L Rep 382 (follld)
11 *The 'Llandovery Castle'* [1920] P 119 (follld)
12 *The 'Kashmir'* [1923] P 85 (follld)
13 *The 'Owenbawn'* [1973] 1 Lloyd's Rep 56 (refd)
14 *The 'Albany'* [1983] 2 Lloyd's Rep 195 (refd)
15 *Easy* v *Universal Anchorage Co Ltd* [1974] 1 WLR 899 (follld)
16 *Lim Yam Teck* v *Lim Swee Chiang* [1979] 1 MLJ 162 (follld)

Legislation referred to

Civil Law Act (Cap 43, 1985 Ed) s 12
Collision Convention 1910 arts 1, 12
Contributory Negligence and Personal Injuries Act (Cap 54, 1985 Ed) s 4(1)
Limitation Act (Cap 163, 1985 Ed) s 3
Revised Edition of the Laws Ordinance 1951 s 13
Interpretation Act 1889 [UK] s 18
Maritime Conventions Act 1911 [UK] ss 1, 2, 8, 9, 10

Dr Myint Soe (*K Chettiar* with him) for the plaintiffs.
Loh Boon Huat (*David Ling* with him) for the defendants.

Cur Adv Vult

Chao Hick Tin JC: This is an action by the personal representatives of Tay Kian Ho, deceased, claiming damages on behalf of the estate and the widow and children of the deceased under s 12 of the Civil Law Act (Cap 43, 1985 Ed) arising out of a collision along the Singapore river between tongkang SC 542A and motor lighter SA 54D on 24 May 1978. The action is based on the negligence of the first defendant in steering the tongkang. The first defendant was alleged to be the servant or agent of the second defendant, the owner of the tongkang. The deceased was the steersman of the motor lighter.

The writ was issued on 30 April 1981. The statement of claim was not filed until 12 February 1982. Both the writ and the statement of claim were served on the first and second defendants on 10 and 9 March 1982 respectively. Appearance and defence of the defendants were filed on 11 March 1982. Summons for directions was taken out on 25 July 1984. The action was set down for trial on 18 September 1984. On 11 December 1987, the case was fixed for hearing on 4 August 1988.

On 26 July 1988, nine days before the date of hearing, the defendants by a notice for further directions applied for an order permitting them to amend their defence to add an additional ground. The defence, as originally filed, contains the usual denial of negligence and alternatively avers that there was contributory negligence on the part of the deceased. By this application to amend, the defendants sought to add the additional ground that the action is time-barred by reason of s 8 of the Maritime Conventions Act 1911. The application to amend was granted by the learned assistant registrar on 1 August 1988.

In view of the amendment to the defence, the plaintiffs applied by motion to this court for certain preliminary questions or issues to be decided before all other issues in the action. As presented, the preliminary questions for my decision are these:

(i) is the imperial Maritime Conventions Act 1911 ('the MC Act') part of the laws of Singapore or only s 1 thereof;
(ii) does the MC Act apply to a case where both vessels are Singapore registered internal water craft and collision takes place in the internal waters of Singapore and the parties are Singaporeans;
(iii) is the limitation period prescribed in s 8 of the MC Act applicable to an ordinary common law action for negligence for the benefit of the estate of the deceased, which also includes a dependency claim;
(iv) in the event that the answer to (iii) is in the affirmative, will the court, in the circumstances of this case, exercise its discretion under the proviso to s 8 thereof to extend the period of limitation prescribed therein.

Applicability of the Maritime Conventions Act 1911

I will now proceed to deal with each of these questions in turn. The Maritime Conventions Act 1911 was enacted by the United Kingdom Parliament, in the words of the long title, 'with a view to enabling certain Conventions to be carried into effect'. The MC Act was intended to give effect to two conventions, dealing respectively with collisions between vessels and with salvage, which were adopted at a conference at Brussels held in 1910. Singapore was then a colony. By the signature and ratification of the United Kingdom, the two Conventions were extended to Singapore. On Singapore becoming an independent state in 1965, Singapore informed the depositary state of the Conventions that she accepted the Conventions: see Singh on *International Maritime Law Conventions*, Vol 4 at p 2959.

Section 9 of the MC Act provides that 'this Act shall extend throughout His Majesty's dominions and to any territories under his protection and to Cyprus: provided that it shall not extend to the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand ... '. As a colony, Singapore was undoubtedly a part of His Majesty's dominions: see s 18 of the Interpretation Act 1889 and 32 *Halsbury's Statutes* at p 447. It is clear beyond any doubt that the MC Act applied to Singapore in 1911. My attention has not been drawn to any subsequent Act of the United Kingdom (until 1963) or of Singapore which repealed the MC Act in so far as its application to Singapore is concerned. Accordingly, the MC Act is still part of the law of the land.

Counsel for the plaintiffs sought to rely on s 4(1) of the Contributory Negligence and Personal Injuries Act (Cap 54, 1985 Ed) ('the CNPI Act') to say that only s 1 of the MC Act applies in Singapore. Let me set out s 4(1) in full:

> This Act shall not apply to any claims to which s 1 of the Maritime Conventions Act 1911 applies and that Act shall have effect as if this Act had not been passed.

A plain reading of this section shows that it recognizes that the MC Act applies in Singapore. I do not see how one could say that by this section, all the other provisions of the MC Act, except s 1 thereof, have ceased to apply in Singapore. All that s 4(1) says is that the CNPI Act does not apply to a claim that falls within s 1 of the MC Act. It does in no way repeal any of the other provisions of the MC Act. At one point in his argument, Dr Myint Soe seemed to suggest that the MC Act applies in Singapore by virtue of s 4(1) of the CNPI Act. For the reasons given above, this suggestion is without any merit.

An ancillary argument advanced is based on the fact that in Vol 8 of the *1955 Revised Edition of the Laws of Singapore*, the MC Act was not listed as one of the imperial statues which applied in Singapore. In my view, it is clear that Vol 8 was not intended to be exhaustive. Nowhere in that volume was that stated to be so. Instead, s 13 of the Revised Edition of the Laws Ordinance 1951 expressly provided that 'The Revised Edition of Ordinances may also contain a reprint of such imperial statutes ... as the Commissioners consider useful to include'. It is not without significance that in the case *The 'Atlantic Faith'*[1] it was assumed by the parties and the court that the MC Act applied in Singapore.

General scope of the Maritime Conventions Act 1911

The arguments under this head rest basically on art 1 of the Collision Convention 1910, the relevant part of which reads:

> Where a collision occurs between sea-going vessels or between sea-going vessels and vessels of inland navigation the compensation due ... shall be settled in accordance with the following provisions in whatever waters the collision takes place.

The plaintiffs pointed out that as in the present case the collision was not between two sea-going vessels or between a sea-going vessel and a vessel of inland navigation, the Convention does not apply. They contended that since the MC Act is enacted to give effect to the Convention, it should be interpreted in line with the Convention. Reliance was also placed on the second proviso to art 12 of the Convention which stipulates that 'where all persons interested belong to the same State as the court trying the case, the provisions of the national law and not of the Convention are applicable'. Accordingly, the plaintiffs argued that the Act does not apply to a case where both parties are Singaporeans, the vessels are Singapore inland craft and the collision occurs in the Singapore river.

Section 1(1) of the MC Act provides that 'where by the fault of two or more *vessels*, damage or loss is caused to one or more of those vessels ...'. Section 2(1), in dealing with loss of life or personal injuries, also simply refers to 'any person' and 'vessel' without any qualifica-

tion. The arguments of the plaintiffs amount to asking this court to qualify the word 'vessels' to mean that at least one of them must be a sea-going vessel and the expression 'any person' to mean one of the parties must be a citizen of another country. I do not see any justification for making any such qualifications to words which are plain on the face of those words. If Parliament had intended that the MC Act applies only in the situation where one of the vessels involved is a sea-going vessel, it could have easily so prescribed.

I would add that s 10 of the MC Act provides that the Act 'shall be construed as one with the Merchant Shipping Acts'. Our Merchant Shipping Act defines 'vessel' to include 'any ship or boat or air cushioned vehicle or floating rig ...' and 'ship' is defined to include 'every description of vessel used in navigation not propelled by oars'. Section 9(3) of the MC Act also provides that that Act applies 'in whatever waters the damage' occurred. Under the MC Act the nationalities of the parties are totally irrelevant. There is nothing in the MC Act or the Merchant Shipping Act which warrants the restrictive interpretation advocated by counsel for the plaintiffs.

In my view the arguments of the plaintiffs proceeded on a fallacious premise: that just because the MC Act is enacted to give effect to the two Conventions Parliament may not widen the scope of the Act to cover its own nationals or its own inland water craft. Contrary to what is contended by the plaintiffs, the second proviso to art 12, in fact, reinforces that view. I know of no general principle of international law which forbids that; neither can I find any rule of domestic law which supports that premise. While I accept that it is a principle of legal policy that an Act should be interpreted to conform with international law, there is nothing here in conflict between the MC Act and the Collision Convention.

I would, however, hasten to add that if indeed in a particular case there is a real conflict between international law and national law, national law must prevail: see *Cheney* v *Conn*[2] and *Collco Dealings Ltd* v *Inland Revenue Commissioner*.[3] In this regard, I can do no better than to cite the following passage from *Maxwell on The Interpretation of Statutes*, 12th Ed, at p 183:

> Under the general presumption that the legislature does not intend to exceed its jurisdiction, every statute is interpreted, so far as its language permits, so as not to be inconsistent with the comity of nations or the established rules of international law, and the court will avoid a construction which would give rise to such inconsistency unless compelled to adopt it by plain and unambiguous language. But if the language of the statute is clear, it must be followed notwithstanding the conflict between municipal and international law which results.

Lest I give the wrong impression that I am saying a state can flout international law with impunity, I should add that responsibility on the international plane of a failure by a state to comply with international law is a distinct and separate matter.

Accordingly, I am of the view that the MC Act applies to the instant case notwithstanding the fact that the collision occurred in the Singapore river and both the vessels were inland water craft and the parties are Singaporeans. In passing, it may be of some interest to refer to the case *Edwards* v *Quickenden & Forester*[4] which concerned a collision in the river Thames between a single-oared skiff and a racing eight owned by a club, of which the defendants were officials. The plaintiff claimed damages for personal injuries and damage to his skiff and the defendants counterclaimed for damage received by the eight. The court there had to decide, inter alia, whether the MC Act applied in that case and came to the conclusion that it did not because the craft were not vessels within the definition of that term in the Merchant Shipping Acts *as the craft were propelled by oars*. The parties and the craft involved would all appear to be English. The collision occurred within the Thames. No argument was raised that the MC Act did not apply on those grounds.

Does s 8 apply to an ordinary common law negligence action?

I turn next to deal with the third question. This involves an interpretation of s 8 of the MC Act which reads:

> No action shall be maintainable to enforce any claim or lien against a vessel or her owners in respect of any damage or loss to another vessel, her cargo or freight, or any property on board her, or damages for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former vessel, whether such vessel be wholly or partly at fault, or in respect of any salvage services, unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered, and an action shall not be maintainable under this Act to enforce any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings therein are commenced within one year from the date of payment:
>
> Provided that any court having jurisdiction to deal with an action to which this section relates may, in accordance with the rules of court, extend any such period, to such extent and on such conditions as it thinks fit, and shall, if satisfied that there has not during such period been any reasonable opportunity of arresting the defendant vessel within the jurisdiction of the court, or within the territorial waters of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity.

Two aspects in s 8 should be highlighted. First, it provides that '*no action* shall be maintainable' in respect of a claim which falls within the scope of that section. Second, the claim may be made against 'a vessel or her owners' and the meaning of the word 'owners' has been extended by s 9(4) in these terms:

> This Act shall apply to *any persons* other than the owners *responsible for the fault* of the vessel as though the expression 'owners' included such persons, and in any case where by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the vessel, this Act shall be read as though for references to the owners there were substituted references to the charterers or other persons for the time being so responsible.

Counsel for the plaintiffs contended that s 8 only applies to an admiralty action in rem or in personam and that it does not apply to an ordinary common law action in negligence for damages. In an admiralty action, both the plaintiff and defendant must lodge in the registry a document containing a statement of certain specific particulars. Failure to lodge such a statement could lead to the dismissal of the action or judgment being entered against the defendant. Reliance was placed on *Ch'ng Kim Huat* v *Hamburg-Amerika-Nische Packetfahrt*[5] where it was decided that in an action at common law for damages for the loss of a tongkang as a result of its collision with a steam vessel, it was unnecessary to file preliminary acts as required in admiralty suits.

There cannot be any dispute that an admiralty action in rem or in personam for damages is procedurally distinct from that of an ordinary common law action in negligence for damages. But the real question is whether there is anything in the MC Act which limits the application of s 8 to only admiralty actions. Particular significance was attached by counsel for the defendants to the words '*no action* shall be maintainable to enforce *any claim* or lien against the vessel or her *owners*'. It seems to me that the contention of the plaintiffs would amount to inserting the words 'in admiralty' after the words 'no action' in that action. As the MC Act deals with maritime collisions, there appears to be some superficial attractiveness in this contention. But this argument runs counter to the plain meaning of the words in s 8, bearing particularly in mind the extended meaning of the word 'owners'.

Moreover, the argument of the plaintiffs would necessarily mean that for the same cause of action, there would be two applicable periods of limitation. Adrian Clark J said in *Ch'ng Kim Huat*,[5] at p 215, 'a person suffering damage as the result of collision between two vessels could therefore seek his remedy either in one of the courts of common law or in the Admiralty Court'. It follows from this argument that a person would have a longer period of limitation if he proceeded by the normal common law action rather than by an admiralty action. But this ignores s 3 (Cap 163, 1985 Ed) of the Limitation Act which expressly provides that the Limitation Act 'shall not apply to any action or arbitration for which a period of limitation is prescribed by any other written law'. Section 8 of the MC Act is another written law and accordingly must prevail.

In *The 'Vadne'*,[6] a writ in the admiralty division was issued by a widow on her own behalf and also as administratrix of the estate of her deceased husband to claim for damages or compensation for the loss of her husband and for personal injury to herself arising out of a collision which occurred on 12 July 1957 in Portsmouth Harbour. However, the writ was only issued on 25 August 1959, more than two years after the collision. Objection was taken to the writ on the ground that it was time-barred by virtue of s 8 of the Act. Lord Merriman said at p 481:

> The objection arises under s 8 of the Maritime Conventions Act 1911, which I have not the slightest doubt is applicable and *would have been applicable even if the writ had been issued in the Queen's Bench Division.* (emphasis added)

In short, Lord Merriman felt that s 8 applied to a common law action.

Equally pertinent is the following comment (no doubt also obiter) by Lord Merriman in *The 'Vadne'*,[6] at p 486, that there was only one period of limitation applicable to the action:

> First of all, it appears from a suggestion ... that the widow's solicitors were under the impression that they had, under Lord Campbell's Act, a claim apart from s 8 of the Maritime Conventions Act 1911, a claim to which three years' limitation applied ... and they thought that they could safely ignore the application of the limitation of two years to this case ... speaking for myself, I do not think it is a good point and I do not think at all that that was really what was in the minds of the widow's solicitors.

The main argument in *The 'Vadne'*[6] related to the point whether the court should exercise its discretion under s 8 in granting an extension of time, to which I shall return later in this judgment.

In the earlier case, *The 'Caliph'*,[7] the plaintiff, a widow, claimed compensation for herself and the children for the loss of her husband on account of a collision at sea between a ketch and another vessel. Under the provisions of the Fatal Accidents Act 1846, an action to recover damages for loss of life must be commenced within twelve months after the death of the deceased person. However, under s 8 of the MC Act, such a claim could be brought within two years. The court held that the period of limitation for that cause of action extended to two years as provided in the MC Act.

The rule in *The 'Caliph'*[7] was applied in *The 'Alnwick'*[8] where the Court of Appeal held that the time limit of two years under s 8 of the MC Act applied to the plaintiff's claim for loss of life and not the three-year period provided by s 3 of the Law Reform (Limitation of Actions etc) Act 1954, with the consequence that her claim was not maintainable unless the time was extended under the proviso to s 8. If the argument of the plaintiffs in our present case is correct, then it would mean that the plaintiff in *'The Alnwick'*[8] need not have applied for

extension of time to proceed against the second defendant and could have instituted a separate common law action against the second defendant and perhaps applied to have the two actions against the two defendants heard together or one after another. I do not think such consequences are intended by s 8.

If there is still any doubt remaining as to whether s 8 applies to a common law action in negligence arising out of a collision at sea, coupled with a dependency claim, s 9(3) of the MC Act should surely remove that: 'The provisions of this Act shall be applied in *all cases* heard and determined *in any court* having jurisdiction to deal with the case and in whatever waters the damage or loss in question was caused ... .'

The case *Re Goring*[9] cited by counsel for the plaintiffs is not really relevant. That case raised the question of the right to salvage remuneration where the service was rendered on *non-tidal* inland waters. There, by majority, the English Court of Appeal held that no such right existed. In any event, in the instant case, that part of the Singapore river where the collision occurred was and is clearly tidal waters.

Should the court extend time under the proviso to s 8?

I will first review some of the cases to ascertain the correct principles that govern the granting of extension of time under the first part of the proviso to s 8. In *The 'Vadne'*,[6] Lord Merriman said, at p 482, that he was 'completely convinced that this is a case in which it would be a monstrous injustice if I did not exercise my discretion in favour of the plaintiff'. There a collision occurred between the first defendant's frigate HMS Redpole and the second defendant's ferry-boat Vadne on 12 July 1957 resulting in personal injuries to the plaintiff and the death of her husband. Within three weeks of the collision, the plaintiff's solicitors wrote to the treasury solicitor making a claim. The correspondence between the solicitors for the plaintiff and the first defendant indicated that if the plaintiff had issued a writ, the defendant would seek to have the proceedings stayed pending the decision on liability as between HMS Redpole and the Vadne. The court held that the first defendant had induced quiescence in the plaintiff and her solicitors. While s 8 of the Act appears to give the court an absolute discretion, Lord Merriman said, at p 486:

> Of course I am not so foolish as to think that it is a discretion which can be applied and exercised capriciously and without any sort of reason for it. It is one which must be exercised judicially.

That the section confers a wide discretion on the judge was declared much earlier in the case *The 'Arraiz'*.[10] There the Master of the Rolls, Sir E Pollock, said that those words in the first part of the proviso 'give the widest possible discretion to the court'. Nevertheless, it is a discretion which should 'only be used in favour of a plaintiff if there are special circumstances which create a real reason why the statutory limitation should not take effect': see Hill J in *The 'Llandovery Castle'*[11] at p 125.

In *The 'Llandovery Castle'*,[11] there was a claim for salvage service by the master and crew of a tug. The service was rendered on 7 December 1916. However, Llandovery Castle was sunk by the enemy in July 1918. The first intimation of a claim by the plaintiffs was on 23 November 1918 and after some correspondence between the parties' solicitors, the claim was repudiated on 18 January 1919. The writ was issued on 2 April 1919. Hill J said at p 125 that:

> The plaintiffs were, at all times, stationed at Dover and could have instructed solicitors at any time. If they were waiting for the owners of the tugs to take proceedings, they could easily ascertain the owners' intentions long before the end of the two years. If they expected a reward from the admiralty and have been disappointed in getting it, that is no reason why the owners of the Llandovery Castle should be deprived of the protection which s 8 gives them.

I must, however, also add that Hill J in refusing to exercise his discretion also took into account the fact that the claim in *The 'Landovery Castle'*[11] was 'at best, a trifling one'.

In *The 'Kashmir'*[12] the plaintiff's son was drowned at sea on 6 October 1918 and the writ was not issued until 5 December 1922. The explanation for the delay was that the plaintiff was not aware until the summer of 1922 that she had any cause of action. Hill J refused to exercise his discretion and one of the factors which seemed to have significantly influenced the judge's decision was the long delay of more than four years. He applied the principle that 'when the defendant has got his limitation it must not be interfered with unless there is good reason'. The Court of Appeal refused to interfere with Hill J's discretion as it was not shown that he had acted on wrong principles.

However, in *The 'Alnwick'*[8] the Court of Appeal held that it need not be the fault of the defendant, who relied on the limitation, for the court to exercise its discretion under s 8. All that was required of the plaintiff was to show that there must be 'good reasons' or 'substantial grounds' for enlarging the two-year period. In *The 'Alnwick'*[8] the plaintiff added the second defendant as a party after the expiry of the two-year period because in the belated defence filed by the first defendant, the latter sought to shift the blame for the collision to the second defendant. The court exercised its discretion in favour of the plaintiff and allowed her to proceed against the second defendant.

A slightly different kind of case was *The 'Owenbawn'*,[13] which was concerned with the question of the renewal of a writ rather than extending time under s 8.

Brandon J thought that 'very similar considerations' applied. In that case, the court after considering the correspondence between the solicitors of the parties and their conduct thereof came to the conclusion, at p 61 that:

> Upon a fair construction of these letters, there was an agreement that service of the plaintiffs' writ should be deferred so long as negotiations were continuing. If I am wrong about that, then I am of opinion that there was, at the least, conduct by the defendants in response to conduct by the plaintiffs of such a character as to lead a reasonable solicitor acting for the plaintiffs to believe that service of the writ could be deferred.

In a more recent case, *The 'Albany'*,[14] the court set out the following factors which should be taken into account in determining whether its discretion should be exercised: degree of blameworthiness for the delay, the length of the delay, whether the circumstances which caused the delay were beyond the control of the party who had been dilatory, and whether if the applications were granted, justice would be done between the parties. In *The 'Albany'*,[14] there were negotiations between the parties which failed and nevertheless Sheen J felt that the circumstances were not sufficient to justify an exercise of his discretion.

Obviously each of those cases was decided on its own merits. But what all those cases seem to establish is that the 'substantial grounds' or 'special reasons' must relate to the circumstances why a writ was issued late. There must be some good reasons to explain the delay justifying the court in exercising its discretion under s 8 to extend time.

In the instant case, what I see is that the plaintiffs' previous solicitors first wrote to the owner of the tongkang on 16 March 1979 making a claim and requesting for a reply within five days failing which the plaintiffs would file such proceedings as they would be advised. A similar letter of the same date was also sent to the insurers of the tongkang, the People's Insurance Pte Ltd. There was no evidence whether any reply was given to that letter. On or about 18 June 1979, the plaintiffs applied for legal aid. On 3 October 1979, the Legal Aid Bureau ('LAB') wrote to the People's Insurance Pte Ltd asking them whether they would admit liability on behalf of their insured. On 22 October 1979, People's Insurance replied denying liability but offered $1,000 purely on sympathetic grounds without any admission of liability. On 8 November 1979, LAB wrote rejecting the ex gratia offer of $1,000 and asking People's Insurance whether they were prepared to increase the offer. LAB also indicated that the plaintiffs were willing to settle at $12,000.

On 26 November 1979, People's Insurance reiterated their stand on liability but on compassionate grounds increased their offer from $1,000 to $3,000. They requested for an answer within 14 days. On 29 November 1979, LAB wrote asking People's Insurance to keep their offer open while LAB obtained clients' instructions. There was no further communication until 8 September 1980 when LAB wrote to say that they had made 'thorough investigations' into the case and argued for a settlement on a fifty-fifty basis. They requested People's Insurance to reconsider their offer. Of course, in the meantime, the two-year limitation period expired on 24 May 1980.

In the reply of People's Insurance dated 10 October 1980, they reiterated the point that the deceased was the cause of his own misfortune. They also went on to say that 'in order to shorten unnecessary arguments, we are prepared to increase our final offer to $5,000 in full and final settlement and without admission of any liability'.

On 10 December 1980, LAB applied rejecting the offer of $5,000 and asked the insurers to further increase the amount based on $400 per month for a period of eight to nine years. On 9 January 1981, the insurers refused any further increase and reiterated their offer of $5,000. On further request for reconsideration, the insurers on 24 February 1980 stuck to their offer of $5,000 saying 'we now await your client's decision in due course, otherwise our offer will be withdrawn'.

The present writ was issued on 30 April 1981. LAB resumed their efforts to seek an amicable settlement in their letter dated 20 March 1982 to Godwin & Co, the solicitors for the defendants. Nothing came out of that as the defendants and their insurers were by then only prepared to offer $3,000. On 15 July 1988, when Godwin & Co encountered difficulties in contacting the defendants, they offered, on the instructions of the insurers, an ex gratia sum of $7,500 which was not accepted.

Now, what the correspondence shows is that there were negotiations between the parties prior to 24 May 1980, the date of the expiry of the two-year limitation period. What is also clear is that from the beginning the insurers of the defendants have denied liability but have offered certain ex gratia payments. There is nothing in the correspondence which can in any way be construed to suggest that prior to 24 May 1980 the insurers had requested the plaintiffs to withhold action. Neither is there anything to suggest that the insurers had induced quiescence. The offer of $3,000 was made by the insurers on 26 November 1979. That offer was intended to be for 14 days. However, on 29 November 1979, LAB wrote asking the insurers to keep the offer open; it would seem that the matter was then allowed to go to sleep. There was no communication for more than nine months until 8 September 1980 when LAB took the matter up again. In response to that letter, and, like the plaintiffs, not realizing that the limitation period had expired, the insurers increased their offer to $5,000 though maintaining their stand that the offer was purely ex gratia.

In my view the fact that there are pending negotiations between the parties cannot per se amount to a good or substantial ground to grant an extension under s 8. There must be something more in the nature of either an express or implied inducement by the defendants or their insurers to the plaintiffs to withhold any further action. Did the defendants or their insurers induce quiescence? Considering the course of conduct between the parties, I am afraid I do not see anything of that kind here. I would be reading too much into the correspondence if I should hold that there was inducement to withhold the filing of a writ. It was the plaintiffs who were seeking a settlement and the insurers merely responded with offers on compassionate grounds. The insurers denied liability from their very first reply. The circumstances here are unlike those in *The 'Vadne'*.[6] It may be of interest to note that in the case *Easy* v *Universal Anchorage Co Ltd*[15] it was held that the mere fact that negotiations for a settlement were in progress was not a sufficiently good reason even to extend the validity of a writ.

As far as I can see, nothing in the delay in the institution of the writ can be attributed to the defendants or their insurers. There appears to be dilatoriness on the part of the plaintiffs and/or their solicitors. Other than exhibiting the correspondence mentioned above, there was really no explanation why the writ was not issued within the two-year period. Even the letters of administration to the estate of the deceased were not obtained until 9 October 1980, ie after the two-year limitation had expired, and extracted on 21 April 1981.

What is equally clear is that both the plaintiffs and the insurers, as well as their solicitors, had overlooked the two-year limitation period under the MC Act. That explains why the insurers carried on the negotiations when the LAB belatedly responded in September 1980. That also explains why the solicitors for the defendants made an offer of $7,500 as late as July 1988. But ignorance or oversight on the part of the parties or their solicitors cannot render the law any less applicable to the case. That fact cannot, in my opinion, be a sufficient ground to grant extension.

However, Dr Minyt Soe urged upon me to take into consideration the fact that the defendants only raised the limitation defence under s 8 at the eleventh hour (more than six years after the original defence was filed) and because of this, and unless time is extended, the plaintiffs will be deprived even of a right to claim against their own solicitors for negligence in instituting the action. I have given this matter the most anxious consideration. But this late raising of the limitation defence has really nothing to do with the question why the writ was issued late. The issue which I have to determine is whether there are substantial grounds or good reasons justifying the late issue of the writ. For the reasons alluded to above, I am afraid no such grounds or reasons have been shown. While my sympathies may be with the plaintiffs, I am afraid a case has not been made out to enable me to exercise the discretion in the plaintiffs' favour.

That concludes my answers to the four questions raised in the motion. But I should also like to state this. I understand that the plaintiffs have appealed against the decision of the learned assistant registrar granting leave to the defendants to amend their defence to include the defence of limitation under s 8. I wish to make it quite clear that I am in no way expressing a view whether the circumstances in this case constitute sufficient ground(s) to grant or not to grant the defendant's application to amend. That will have to be separately argued on the hearing of the appeal. The contention of Dr Minyt Soe that an amendment granted at this late stage would even deprive the plaintiffs of their right of recourse against their own solicitors may well be a relevant consideration on the hearing of the appeal. That will be for the judge hearing the appeal to decide in the light of the submission to be made by the parties. But all I am saying is that the circumstances as I have referred to above are not sufficient for the purpose of granting an extension of time under the first part of the proviso to s 8 of the MC Act.

Finally, I ought to mention the following procedural events for the record. The hearing of the motion relating to the preliminary points took place before me on 4 August 1988. I reserved judgment, which was delivered on 13 September 1988. On 14 September 1988, before any order was extracted pursuant to my judgment, counsel for the plaintiffs wrote requesting for further arguments on two grounds:

(i) my judgment did not deal with his arguments based on arts 1 and 12 of the Collision Convention;

(ii) counsel had expressly made it known to the court before reserving judgment that in view of the short time available to him (from the date leave was granted to the defendants to amend the defence to 4 August 1988), he could not ascertain from the Legal Aid Bureau or the previous solicitors what steps were taken to pursue the claim before the two-year limitation period expired.

I must point out that the first ground was not vigorously pursued during the hearing on 4 August 1988. I clearly indicated my reasons why I thought there were no merits at all in that point. Thus, I omitted to refer to it expressly in the earlier judgment which I now do.

As regards the second ground, there would appear to be some miscommunication between counsel for the plaintiffs and the court. I was under the impression that counsel would soon submit to me whatever written communications there were, if any, between the parties prior to the expiry of the limitation period; whereas counsel for

the plaintiffs thought that I would request for the documents if I thought they were going to be necessary, bearing in mind that if the plaintiffs were, for example, to succeed on the third preliminary issue there would be no need to go on to the fourth. That being the position and as counsel informed the court that there was correspondence between the parties highly material to the fourth issue, ie exercise of my discretion under s 8, I thought it is only fair and just that I should hear him on that. Accordingly, I recalled my earlier judgment. This procedure is not without precedent. Paragraph 42/1/4 on p 661 of *The Supreme Court Practice 1988* has the following passage:

> A judgment takes effect from the time when the judge pronounces it and the subsequent entry of it is a mere form in obedience to the direction of the court ... but it is within the powers of a judge to alter his judgment at any time before it is entered and perfected.

A similar situation occurred in *Lim Yam Teck* v *Lim Swee Chiang*.[16] There the learned judge, after dismissing the plaintiff's claim, recalled the parties and heard further arguments, as a result of which judgment was entered for the plaintiff. The case went on appeal to the Court of Appeal and the appeal was dismissed.

Order accordingly.

Solicitors: *Murphy & Dunbar*; *Godwin & Co.*

Reported by *PS Ranjan*

Re Cosmotron Electronics (Singapore) Pte Ltd

HIGH COURT (SINGAPORE) – ORIGINATING PETITION NO 5 OF 1989
CHAN SEK KEONG J
10 FEBRUARY 1989

Companies and Corporations – Judicial management – Petition for – Company unable to pay its debts – Company entered into relocation agreement to sell off its plant and machinery to third party – Creditors opposed petition – Whether petition was made bona fide – Whether public interest under s 227B(10) must be proved in addition to other requirements under s 227B(1) of Companies Act for petition to succeed – Companies Act (Cap 50, 1988 Ed), ss 227A, 227B(1), (7) & (10)

This is a petition by Cosmotron Electronics (Singapore) Pte Ltd ('the company') for an order that the company be placed under judicial management. The company carries on the business of manufacturing printed circuit boards in Singapore. It has a manufacturing plant which, together with its undertaking and other assets, has been charged to Indian Bank under a debenture to secure banking facilities of $900,000. The company is unable to pay its debts and its creditors, including Indian Bank and Mayertro Industrial Pte Ltd, have been pressing for payment for some time. Indian Bank had given notice of its intention to appoint receivers and managers under their debentures prior to the presentation of this petition by the company.

On 6 November 1988, the company entered into an agreement ('the relocation agreement') to sell the company's plant and machinery to a third party. In its petition, the company stated that unless it is able to 'see through the relocation of its manufacturing assets and complete its outstanding contracts there is no money ... now or in the future to pay off even part of its said aggregate debts ...'. For this reason, the company is of the view that placing the company under judicial management would 'achieve the survival of the company on the whole or part of its undertaking as a going concern and a more advantageous realization of the company's assets would be effected than through a winding up and the interest of the creditors would be better served'. The petition was opposed by Indian Bank, Mayertro and three other unsecured creditors on the grounds that the petition was not made bona fide and that no public interest was involved in this petition. Indian Bank has, in fact, exercised their powers as debenture holders and appointed receivers and managers of the undertaking and assets of the company but the officers were unable to assume office because of this petition. In its argument on public interest, Mayertro contended that by reason of s 227B(10) of the Companies Act ('the Act'), a company seeking a judicial management order must, in addition to satisfying the court of the requirements of s 227B(1), prove that the public interest so requires it.

Held, dismissing the petition:

(1) The court is satisfied that the company was unable to pay its debts but it did not consider that the making of the order would be likely to achieve any of the purposes set out in s 227B(1)(b) of the Act for the following reasons. Firstly, the survival of the company did not depend on placing the company under judicial management so much as ensuring that the relocation agreement was implemented by the parties. If the purposes sought to be achieved by the company in judicial management can equally be achieved by the creditors without detriment to the company or its shareholders, the company has not made out a valid case for depriving a secured creditor of its contractual right to assume possession and control of its security. Secondly, since the company has agreed to dispose of its manufacturing plant which, in effect, constitutes its entire undertaking, the question of rehabilitating the company or of preserving all or part of its business as a going concern does not arise. Thirdly, the company has also failed to show that placing the company under judicial management would result in a more advantageous realization of the company's assets than on a winding up. Finally, the relocation agreement contained an open-ended term which calls into question the bona fides of this transaction.

(2) Mayertro's contention as to proof of public interest is not the correct approach to interpreting s 227B(10). Section 227B(10)(a) has the effect of vesting in the court an overriding power to make a judicial management order if it considers the public interest so requires, notwithstanding that it may not be satisfied that the making of the order would be likely to achieve one or more of the purposes set out in s 227B(1). This is undoubtedly the effect of s 227B(10)(a) in relation to s 227B(1).

(3) Since the existence of 'public interest' in s 227B(10) is a requirement for the exercise of an overriding power, it would connote an interest or object which, if achieved, would transcend any or all of the purposes prescribed in s 227B. As there was no evidence to support a claim that in this petition public interest requires that the company be placed under judicial management, the petition is accordingly dismissed.